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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/368,503	08/05/1999	LARREN F. JONES	51291.81516	5616
54327	7590	05/30/2006		EXAMINER
ESCO CORPORATION			BATSON, VICTOR D	
2141 NW 25TH AVENUE				
P.O. BOX 10123			ART UNIT	PAPER NUMBER
PORTLAND, OR 97210			3671	

DATE MAILED: 05/30/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)
	09/368,503	JONES ET AL.
	Examiner Victor Batson	Art Unit 3671

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE ____ MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) Responsive to communication(s) filed on 14 September 2005.
- 2a) This action is FINAL. 2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) Claim(s) 1-138 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) Claim(s) _____ is/are allowed.
- 6) Claim(s) 1-138 is/are rejected.
- 7) Claim(s) _____ is/are objected to.
- 8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on _____ is/are: a) accepted or b) objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 - a) All b) Some * c) None of:
 1. Certified copies of the priority documents have been received.
 2. Certified copies of the priority documents have been received in Application No. _____.
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>12/22/05, 4/25/06</u> . | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| | 6) <input type="checkbox"/> Other: _____ |

Defective Oath/Declaration

The reissue oath/declaration filed with this application is defective (see 37 CFR 1.175 and MPEP § 1414) because of the following: The specific changes/amendments to the claims must also be identified in the declaration, in addition to the errors in the original claims.

In accordance with 37 CFR 1.175(b)(1), a supplemental reissue oath/declaration under 37 CFR 1.175(b)(1) must be received before this reissue application can be allowed.

Claims 1-138 are rejected as being based upon a defective reissue declaration under 35 U.S.C. 251. See 37 CFR 1.175. The nature of the defect is set forth above.

Receipt of an appropriate supplemental oath/declaration under 37 CFR 1.175(b)(1) will overcome this rejection under 35 U.S.C. 251. An example of acceptable language to be used in the supplemental oath/declaration is as follows:

"Every error in the patent which was corrected in the present reissue application, and is not covered by a prior oath/declaration submitted in this application, arose without any deceptive intention on the part of the applicant."

Claim Objections

Claims 1-138 are objected to because of the following informalities: The claims do not include the claim identifiers. Appropriate correction is required.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the

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invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 119-124, are rejected under 35 U.S.C. 103(a) as being unpatentable over Jones (5,088,214) in view of Jones et al. (4,433,496).

Jones '214 discloses a wear assembly having all of applicant's claimed structure including a boss 29, a wear member including a longitudinal slot, and a lock 38. Jones '214 however lacks the lock including an adjustment assembly movable to tighten the mounting of the wear member on the lip.

Jones et al. '496 teaches that it is known in the art to use a lock including an adjustment assembly movable to tighten the fit of the lock and eliminate looseness in the wear assembly.

It would have been obvious to one of ordinary skill in the art at the time the invention was made, to modify the wear assembly of Jones (5,088,214) by using a lock with an adjustment assembly as taught by Jones et al. '496, to eliminate looseness in the wear assembly.

Response to Arguments

Applicant's arguments filed 7/19/05 have been fully considered. Applicant's note regarding the new reissue declaration has been noted, however the rejection has been maintained for consistency and clarity. Applicant's arguments regarding claim 119 are not persuasive. Applicant argues that the "extensive locks" referenced in the Jones '214 patent is a reference to the more complex locks used in the prior art specifically mentioned in Jones '214, and therefore, the use of a lock similar to that disclosed in Jones '496 would not be obvious. This is applicant's opinion, which the examiner does

not agree with. Additionally, the examiner believes that the lock disclosed in the Jones '496 patent is easy to install and remove, and is not complex or extensive, simply because it is comprised of 4 pieces (1 nut, 1 bolt and 2 wedge pieces).

Applicant argues that the Jones '496 lock arrangement only works because of the through-hole lip. The examiner does not agree. It is the examiner's interpretation that as the bolt 33 of Jones '496 is tightened, the members 26 & 28 are forced in an outward direction perpendicular to the bolt, thereby tightening the entire assembly. This expansion of the lock would work regardless of a through-hole. Additionally, the lock of Jones '496 uses a "C" clamp because the lock is used with a through-hole in a lip. However, if one were faced with the problem of tightening a wear assembly that does not use a through-hole in a lip, a "C" shaped clamp would not be required and could be replaced with a different shaped clamp as part of the lock assembly, with the lock assembly still working to be forced outwardly when tightened to thereby tighten the assembly it is used with.

Applicant argues that Jones '496 only teaches the use of such a lock in a through-hole in a lip since this is shown in Jones '496. The examiner does not agree with this narrow interpretation of Jones '496 which appears to attempt to incorporate all of the features of the Jones '496 lock into the wear assembly of the '214 patent. It is the examiner's position that Jones '496 also, broadly teaches that it is known in the art to use an adjustable locking assembly to tighten the fit and eliminate the looseness in a wear assembly. Therefore, in response to applicant's argument that the '496 patent only suggests the use of a lock that fits into a through-hole formed in the lip, the test for

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obviousness is not whether the *features* of a secondary reference may be bodily incorporated into the structure of the primary reference; nor is it that the claimed invention must be expressly suggested in any one or all of the references. Rather, the test is what the combined teachings of the references would have suggested to those of ordinary skill in the art. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981).

Conclusion

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

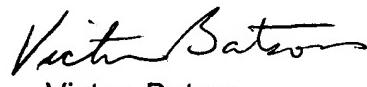
A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Victor Batson whose telephone number is (571) 272-6987. The examiner can normally be reached on Monday through Thursday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Tom Will can be reached on (571) 272-6998. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

May 23, 2006


Victor Batson
Primary Examiner
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